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No. 85] NEW DELHI, THURSDAY, APRIL 16, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 8th April 1953

S. R. O. 692—WHEREAS the election of Shri K.S. Subramania Goundar of Konganapuram, Tiruchengode Taluk, Salem District, Madras State, as a member of the Legislative Assembly of Madras, from the Mecheri constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri M. Kandasami Kandar of Palayam Pudur, Palayam Majara, Dharmapuri Taluk, Salem District, Madras State ;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission ;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, NORTH ARCOT, VELLORE

PRESENT :

Sri M. Anantanarayanan, I. C. S.—*Chairman.*

Sri P. Ramakrishnan, I. C. S.—*Member.*

and Sri B. V. Viswanatha Iyer, M. A., B. L.—*Member.*

Monday, the Twenty-third day of March, one thousand nine hundred and fifty-three.

ELECTION PETITION No. 8 OF 1952.

M. Kandasami Kandar.—*Petitioner.*

Versus

RESPONDENTS :

1. K. S. Subramania Goundar.
2. C. Guruva Reddiyar.
3. S. K. Perumal Goundar.
4. M. G. Natesa Chettiar. }
5. Karuppa Chetti Goundar. }

Added on I. A. No. 206/52 dated 15-9-1952.

This is a Petition under Section 81 of the Representation of the People Act, 1951, by one of defeated candidates M. Kandasami Kandar to declare the Election of the 1st Respondent to be void or that the Election is wholly void for non-compliance of the Provisions of Representation of

the People Act, and also to declare that the Election of the returned Candidate to be void on the further ground that the said Election has been procured or induced by corrupt and illegal practices aforesaid and the result of the said Election has been materially affected by the said illegal and corrupt practices and for costs of this Petition.

This Election Petition coming on 28th February, 12th and 13th March, 1953 before us, for hearing, in the presence of Messrs. V. Nageswara Iyer and S. Krishnaswami Iyengar, Pleaders for the Petitioner, and of Messrs. N. Rajagopala Iyengar, M. N. Rangachariar, and V. C. Sadasivam, Advocates, for the 1st Respondent, and the rest of the respondents being absent *ex-parte*, and the Government Pleader, Mr. N. K. Vijayaraghavan, representing the State, and having stood over till this day for consideration, the Tribunal passed the following.

JUDGMENT

The petitioner, Sri M. Kandasami Kandar seeks in this petition to set aside the election of the 1st respondent, Sri K. S. Subramania Goundar, who was declared elected to the Madras State Assembly from the Mecheri Constituency of Salem District in the last General Elections. The 1st respondent secured 15,345 votes as against 14,036 votes secured by the petitioner, who got the next largest number of votes, and the former succeeded by a majority of 1,309 votes. The main grounds urged by the petitioner are (i) that in the polling station bearing No. 94, namely Kanjanaickampatti, comprising six booths the polling commenced only at 1-40 P. M., that the polling was stopped at 5 P. M., and that he was prejudiced by the conduct of the authorities in delaying the polling time; (ii) that in polling Station No. 92 comprising two booths at the Board Girls' School, Mecheri although separate arrangements were made for the voting by women voters, the polling staff allowed both men and women voters to enter into the booths indiscriminately, that owing to the resulting confusion a large body of women voters went away without exercising their votes and the petitioner was prejudiced on this account; and (iii) that the 1st respondent, who was the President of the District Board of Salem, during the month of December, 1951, gave appointments to the sons of certain very influential persons of the locality and with the help of such gratification he influenced them to induce the voters to vote for him. The 1st respondent in his rejoinder states that polling commenced at 1 P. M., instead of at 7 A. M., at Kanjanaickampatti, that this was acquiesced in and consented to by the representatives of all the candidates, and further that the result of the election was not affected in any manner thereby. The 1st respondent states that under the circumstances the petitioner was estopped from complaining of the breach of the rule as regards the commencement of the polling. He further avers that the polling went on till 9 P. M., when the last voter present cast his vote and that there was not a single voter waiting. With regard to the averment that separate booths were not provided for women and men voters in Polling Station No. 92 the 1st respondent denies the charge and states that there was no failure to comply with Rule 18 of the Election Rules, and that the petitioner was not prejudiced as a result thereof. As regards the third charge, namely, the appointment of teachers in schools the 1st respondent states that the appointments were made *bona fide* and in the course of official routine and that they were not the result of a gratification offered by him and that no sort of coercion or undue influence was practised upon the voters in the matter of securing votes. Respondents 2 to 5 who were the other duly nominated candidates have not filed statements:

2. The following issues were framed:—

- (1) Are the allegations in paragraphs 7 (a) and 7 (b) of the petition true, and if so, do they constitute any illegality or irregularity within the meaning of Section 100(2) (c) of Act XLIII of 1951, rendering the Election thereby liable to be set aside?
- (2) Are the allegations in paragraph 7 (c) of the Petition true, and if so, do they constitute 'corrupt practice' within the meaning of Section 100(2)(d) of the Act, thereby rendering the election liable to be set aside?
- (3) Whether the result of the election has been materially affected by any irregularity or illegality, corrupt practice set forth under Issues 1 and 2?

3. Issue 2.—In polling Station No. 92, Board Girls' School, Mecheri, there were two booths one for voting by women voters and the other for voting by the men voters. The petitioner relies upon the evidence of P. Ws. 3 and 4 for showing that the polling staff in charge of these two booths allowed both the men and women voters to enter into the booths indiscriminately, that as a result thereof a large body of women voters including these two witnesses found themselves unable to get in because of the crowd and that therefore they went home without voting. Rule 18(2) of the Representation of the People Rules, 1951, provides that the Returning Officer may provide separate polling booths for men and women electors of any specified polling area. This rule is intended to provide special facilities for women electors in polling stations and generally it is incumbent on the Returning Officer to see that adequate safeguards are provided with a view to prevent indiscriminate rush by men electors in the polling booth set apart for women electors. It is likely that in this polling station there was some little confusion in the polling booth allotted to the women electors as a result of men electors getting in. But it is difficult to believe that men electors themselves could have taken any part in voting at the polling booth reserved for women, because they could not have got their voting papers there. P. W. 4 states that three or four women went away with her without voting, and P. W. 3 says that she went back without voting. The evidence adduced on this point falls far short of proving that there was any general confusion or that the women as such were scared away from exercising their votes in the particular polling booth. The

few voters who went away might probably have gone away because they had to wait to get their voting papers. In fact, the petitioner's Counsel at a later state stated that he could not adduce any substantial evidence on this point. We therefore find that this charge is not made out and the issue is answered against the petitioner.

4. *Issues 1 and 3.*—The next charge levelled against the 1st respondent is with reference to the appointment of teachers made by him shortly before the election. P. Ws. 1, 2 and 5 have been examined by the petitioner with reference to this charge. The suggestion is that appointments were made so that the father of the appointee could work in support of the 1st respondent's candidature. It is suggested that such persons wielded considerable influence either as head of the community or as being the karnam of the village. It is a little difficult to understand the exact charge made by the petitioner under this head. At one stage he sought to prove that it was some kind of coercion or undue influence while at another stage he suggested that it amounted to bribery by means of gratification. In any view, the evidence adduced is neither clear nor consistent. In fact, the petitioner's Counsel candidly admitted at the later stage of the enquiry that he was not pressing this point and therefore the 1st respondent did not adduce any evidence in rebuttal. It is therefore unnecessary to discuss this part of the issue in greater detail. We hold that the charge levelled against the 1st respondent as stated in paragraph 7 (c) of the petition is not made out and we answer this portion of the issue against the petitioner.

5. The main and substantial charge levelled by the petitioner relates to the late commencement of polling in Polling Station No. 94, Kanjanaickampatti. On this aspect of the case the facts themselves are not in dispute. Sri Loganatha Iyer, who was the Presiding Officer of the Polling Station has been examined as a Court witness. He states that he reached the polling Station on the morning of the 10th of January, to check up if the materials were all available for the polling, that he found during the course of the day that the bull symbols were not available and he therefore sent a report (Ex. C-1) to the tahsildar at 3-30 P.M. that day. He states that he received the reply at 8-30 P.M., whereby he was informed that the Tahsildar of Omalur who was camping eight miles away would bring the symbols to the station. At 8-30 P.M. he wrote out a telegram to the Returning Officer and also sent a letter (Ex. C-2) to the Tahsildar. A reply was received the next day at 7-30 A.M., to the effect that the Tahsildar was arriving with the symbols. Inasmuch as the Tahsildar did not arrive on the morning of the 11th he sent a telegram to the Returning Officer stating his inability to commence polling because of the non-arrival of the symbols. He also sent an urgent letter to the Tahsildar, Omalur (Ex. C-3) stating that the symbols had not been received and that the commencement of polling was delayed on that account. No reply was received either of these communications. At 10-30 A.M., that day the Presiding Officer addressed another urgent letter to the Returning Officer (Ex. C-4) wherein he sets out the course of events since he assumed charge the previous day. He states that polling had not commenced as the Congress symbol labels had not been supplied and the Tahsildar did not turn up. He added "I also request to be instructed whether I can commence polling on receipt of the labels from you irrespective of the time at which it is received here". The Tahsildar arrived at the Polling Station with the symbols at about 1 P.M. and polling commenced thereafter. The witness also states that after 10 A.M., there was a crowd of nearly 200 persons waiting at each booth to register their votes and that he told the people who were asking him whether the polling would be held that day or not, that it will commence after symbols were received. He states that just before the commencement of the polling he took a letter signed by the agents of the candidates agreeing that the poll might commence, but that the letter was mislaid and could not be traced. The Returning Officer himself came to the polling booths at 1-30 P.M., when he was apprised of the facts and there was no talk at all about the adjournment of the Polling then. With reference to the closing of the poll the witness states that voting went on till 5 P.M., at which hour he asked all people waiting to register their votes to come into the enclosure and those persons were allowed to vote.

6. From the foregoing evidence it is clear, and this is not disputed by the parties, that polling commenced at 1 o'clock, that it was closed at 5 P.M., although such persons as had been waiting inside the enclosure were allowed to record their votes later. The question that arises for consideration is whether the late commencement of the poll constituted an illegality so as to vitiate the election. Section 56 of the Representation of the People Act, 1951, provides as follows:

"The appropriate authority shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed:

Provided that the total period allotted on any one day for polling at an election in Constituency shall not be less than eight hours".

Rule 16 of the Representation of People Rules provides for the publication of the hours fixed for polling, and it is not in dispute that the prescribed hours were 7 A.M. to 5 P.M., with an interval of two hours. Counsel for the 1st respondent submitted with reference to the Proviso to Section 56, first, that although it was incumbent on the Returning Officer to allot eight hours for polling, the voters themselves were not guaranteed the right to exercise their franchise during that time and that the omission to render eight hours poll available to the voters was not one which could vitiate the election. We find it difficult to accept this argument in its entirety. As Grove, J. observes in the Hackney Case (2 O'M. & H. 77 at page 83)—

"Among the principles of the Act is one that there should be districts arranged for the convenience of the electors, at which they might have at the polling day suitable machinery for giving their votes to the candidate to whom they chose at the last moment to

give their vote. x x there should be means fairly taken to give to the electors the opportunity of voting with as little trouble as possible".

The provision as regards eight hours poll is based upon the principle that the electors should have a fair opportunity of recording their votes. To say that the Returning Officer is under an obligation to allot eight hours poll but that he is not bound to ensure its actual working or that the voters themselves do not have such a right vouchsafed to them is to ignore the policy underlying the rule and to really whittle down its provisions. In this connection Section 56 has to be read along with Section 57 of the Act, which provides for the adjournment of poll in case of an emergency. Clause (1) provides that if the proceedings at any polling station are interrupted or obstructed by any riot or open violence and it is not possible to take the poll on account of any natural calamity or any other sufficient cause the Presiding Officer or the Returning Officer shall announce an adjournment of the poll to a date to be notified later. Although eight hours poll is not specifically referred to in this clause, it is clear that the presiding Officer as well as the Returning officer have the power to adjourn the poll if in a given case it is not possible to ensure for the voters eight hours poll. We are therefore of the opinion that the omission to secure for the voters of Kanjanaickampatti an eight hours poll is an infringement of the statutory requirement provided under Section 56 of the Act.

7. The further question that arises is whether the non-observance of the foregoing rule vitiates the election, in other words whether the election is liable to be set aside under Section 100(2) (c) on the ground that the result "has been materially affected by the reception or refusal of a vote x x or by the non-compliance of the provisions of the Constitution or of this Act or of any rules or order made under this Act x x". The decision of this question has given us the greatest anxiety. The language of the Section extracted above is a departure from the English Law as set out in the 13th Section of the Ballot Act, 1872 as well as the corresponding Section in later English enactments, which provides that no election should be declared invalid by reason of a non-compliance with the rules contained in the Act if it appears to the Tribunal that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election. Consequently, in England, the general rule has been that the party who maintains the validity of the election notwithstanding the infringement of the rule has to satisfy the Court that the result of the election has not been affected by the irregularity. On the language of Clause (c) of Section 100(2) extracted above however it would really be incumbent on the person assailing the election to establish that the irregularity had materially affected the result of the election. In *Ahmad Thambi Maraicair Vs. Basava Maraicair* I. L. R. 46 Madras 123 Wallace J., while considering similar language under the Madras District Municipalities Act held that the burden of proof was on the petitioner in such cases to establish that the non-compliance with the Act materially affected the result of the election.

8. But the further question is how exactly the burden of proof is to be discharged by the petitioner? In a case of this kind one method of such proof will be to have all the electors of the particular Polling Station who did not vote examined with a view to ascertain how exactly they might have wished to vote had they had the opportunity of doing so, and what in that event would have been result of the election. As Grove, J., observed in the *Rackney Case* such a course would be simple impossibility and would further violate the rule as regards secrecy of the ballot. Without laying undue stress on the question of burden of proof it would be better to apply the test laid down by Grove J., in the above case in the following words—

"x x an election is not to be upset for an informality or for a triviality, it is not to be upset because the clerk of one of the polling stations was five minutes too late, or because some of the polling papers were not delivered in a proper manner, or were not marked in a proper way. The objection must be something substantial, something calculated really to affect the result of the election. X X the judge has to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a reasonable mind to produce a substantial effect upon the election."

In the Kanjanaickampatti Polling Station there were on the whole 4194 voters of whom only less than a third namely, 1385 voters recorded their votes. That the voting in this area was very poor is borne out by a scrutiny of the details as to voting in the other polling stations in the Constituency. The average of the totalotes polled in all the stations is about 52 per cent, while the highest polling was around 70 per cent. Counsel for the 1st respondent urged that we could assume that the average rate of voting in all the polling stations put together or in the adjoining polling stations namely, polling stations bearing Nos. 93, 97, 95 and 88 could be adopted as the basis for determining how many would have voted in Station No. 94. He further states that if the average votes recorded in those stations be taken as the guide in determining how many voters would have voted in this polling booth we should further hold that those persons would have voted in the same proportion in which the votes were recorded in the particular station namely Polling Station No. 94. It appears the 1st respondent secured 431 votes while the petitioner secured 591 votes in the particular Polling Station. We have been called upon to adopt a statistical formula on the above basis and to hold that if the voting had gone on on that basis the petitioner would not have got such a large number of votes so as to tilt the election in his favour.

9. In this connection we think that it would be desirable to state the case for the 1st respondent in the form in which it was stressed before us by his learned Counsel, with particular reference to the *Bulandshahr* case (1 Hammond's Election Case page 85), which the learned Counsel desires to rely upon as his main source of authority, and which seems to have been followed in a later decision also (Doabia's Election Cases Vol. II page 226). It is all the more necessary that we should dwell upon this, both to do justice to the argument itself, and as we dissent from the reasoning in the *Bulandshahr* case, and the mode in which certain principles were applied to the facts of that particular case. The argument is that due allowance must be made for the 'inertia' of the electors as a statistical analysis of the cross-section of the franchise in this particular area shows that the proportion of those who actually voted to the voters' Constituency varies from about 18 per cent to 70 per cent. Learned Counsel for the 1st respondent has prepared and made available to us a tabular statement in this respect, and shown that, in no case, is the 'inertia' totally absent. He therefore contends that some kind of statistical average should be taken, and he has attempted different bases affording averages between 50 and 55 per cent. In the *Bulandshahr* case which related to an Election under the United Provinces Municipal Act, the Pooling Officer was compelled owing to disturbance to stop the poll at one of the Polling Stations earlier than the time prescribed. A statistical estimate was worked out by the Tribunal upon the basis of the speed of the poll previously recorded. Upon this aspect, we desire to stress that no kind of statistical method of this description may be really satisfactory. As we have emphasised elsewhere, the matter may be different where the balance is not tilted, even assuming that every one of the voters prevented from voting by the non-observance of the hours of poll, did actually vote, and did vote in favour of the petitioner. But where the majority is not large enough for this, as in the present case, it is obvious that great caution should be exercised before we arrive at any particular conclusion that only 50 per cent or 55 per cent. of the voters who failed to poll would have voted, basing this opinion upon any law of averages. Actually, if more than 62 per cent of the voters had voted, and voted in favour of the petitioner, this is sufficient to tilt the balance, and this has been conceded. We must point out that in quite a few booths the voting has been as high as 66 per cent or 70 per cent of the total poll. Under those circumstances, we think it would be most unsafe to assume that more than 55 per cent of the remaining voters would not have voted in this particular polling station, had the proper and full hours been maintained. We must point out, in addition, that this a polling station of more than average size, and that the proportion seems to have been fairly high in several such stations where the total number of voters exceeds 3000.

10. As regard the other principle namely, the proportion in which these votes would have been polled, we prefer to base the decision entirely upon the criteria and considerations expressed by Mr. Justice Grove in the *Hackney Case*. We are quite unable to see how any law of averages, or any working out of the theory of probability, can furnish a safe guide in this respect, or the foundation of a judicial principle. It is evident that such a technique can be applied with safety only where the range of facts permits the application of an 'actuarial' method, and not otherwise. But it is of the very essence of the democratic system of voting, that 'imponderables' might influence the situation. It is perfectly conceivable that all the rest of the unpolled votes, if polled, might have been in favour of the petitioner, and that is the only foundation for the application of a judicial principle. It is of course, quite probable, and even very likely, that the petitioner would not have polled all the votes. But here we can only reiterate the dicta of Grove J., that Courts of Justice cannot act upon a principle which, in essence, involves the impossible or impracticable namely, the prediction of situation or result which it is not possible to foresee. We would here like to quote one passage from the *Bulandshahr* case already referred to—

"Of the 877 votes actually polled 341 were cast for Amar Singh and 247 for Nanak Chand. There is no evidence to show that this proportion would not have been maintained after 2-30 P.M."

With great respect, we must entirely differ from this mode of reasoning, and even from the principle upon which it proceeds. In our view, the onus of proving that the result of the election would have been materially affected is upon the petitioner, but that onus could be discharged, and a judicial tribunal could expect it to be discharged, only by establishing circumstances and facts justifying the probability or inference that the balance might well have been tilted. If that is to be established as a certainty, we are asking for the impossible. Again, the Court would not be justified, in adopting any purely statistical technique, in assessing such a probability, for the weighty reasons which we have already referred to.

11. While we therefore agree that before setting aside an election it is necessary to establish in a given case that the result of the election was materially affected by non-compliance with the rules, we are unable to adopt the calculations based upon possible trends in voting given effect to in the above case. In this connection the *Hackney Case* (2 OM&H, page 77) has a direct bearing. In that case, as here, there was a partial failure to deliver the requisite ballot boxes, papers and other materials. In two polling places no polling at all took place and in three other polling stations the polling did not commence at the proper hour, with the result that a large number of people were prevented from voting. It was contended on behalf of the successful candidate that had the polling stations in question been opened the result would in no way have been affected.

as he had an established majority in that Constituency. Grove J., rejected the contention in the following words—

"It seems to me to be a problem which the human mind has not yet been able to solve, namely, if things had been different at a certain period, what would have been the result of the concatenation of events upon that supposed change of circumstances. I am unable at all events to express an opinion upon what would have been the result, that is to say, who would have been elected provided certain matters had been complied with x x".

The election in the above case was set aside for the reason that several thousands of electors had impediments presented to their voting namely, by the delay in the opening of the polling stations and by the closing of some of the other stations.

12. In *Shyam Chand Basak Vs. Chairman, Dacca Municipality* (I. L. R. 47 Calcutta 524) the question arose whether the alteration of the hours of polling contrary to rule 17 under the Bengal Municipal Act vitiated the election. In that case it was contended that there was a violation of the rules but that the election was not vitiated thereby. In holding the election to be void it was held that the non-compliance with the rule had materially affected the result of the election. On the question of burden of proof the learned Judges would seem to follow the English decisions and hold that the party who maintains the validity of the election notwithstanding the infringement of the rule must satisfy the Court that the result of the election was not affected by the error or irregularity. This was rightly dissented from by Wallace J., in I. L. R. 46 Madras 123 cited above. But as pointed out earlier the question does not turn on the burden of proof but is really one to be answered on the facts of the case. In the course of the judgment, the learned Judges after referring to certain American cases state the law in the following terms—

"x x where the law fixes the opening and closing of the polls at sunrise and sunset, the election should not be invalidated, merely because the polls were closed a few minutes before or were kept open a few minutes after sundown, not thereby affecting the result in any manner. But this rule is applied only to what are called unsubstantial departures from the law. Where the polls were opened from 1 P.M., until 6 P.M. instead of from one hour after sunrise to sunset, as required by law, the election was held invalid : *Tebbe V. Smith* (1895) 49 Am. St. Rep. 68, and *Goree V. Cahill* (1914) Am. Cas. 1914 D. 549".

13. The only other decision which calls for reference in this connection is the *Islington case* (5 O'M&H. 120). In that case the poll was continued after the prescribed hour although there was no provision in the Ballot Act, for such a procedure. Fourteen persons were shown to have recorded their votes in this manner. It was held that those votes were invalid. On the further question whether the election was rendered invalid by reason of such votes being taken into account the Court observed as follows :

"Even if all those improperly received votes are counted as votes which were given for the Respondent Lough . . . and *in justice to the Petitioner it must be so assumed* . . . there remains a clear majority of five votes for him".

This is valuable authority for the position that in deciding about the disposal of the invalid votes the Court is not called upon to enter into an arithmetical analysis of the trend of voting but rather that it would be entitled to assume that the invalid votes should really have gone in favour of the person whose election was disputed. In the converse case the Court is entitled to assume where there is a vital irregularity of procedure, that but for the irregularity the votes which could have been cast might have been cast in favour of the person disputing the election. As already observed we are unable to find any rational principle involved in assuming that voting would follow a particular pattern or that the general voting in the whole Constituency could be a complete or safe guide for deciding how the voters in a particular station would have behaved. No doubt, if the position of the parties was such that even taking into account the votes not recorded as votes cast for the petitioner the result of the election would not be affected, the election should not be declared void. But where as in this case the number of voters left out is so large that if the whole or a substantial portion thereof could have tilted the result of the election, if the same were taken into account in favour of the petitioner, it would be right and proper to set aside the election rather than embark upon an unsafe enquiry largely based on guess work as to the probable trends of voting such as was adopted in the Bulandshahr case. It may be as state above that latitude may have to be given for the inertia of the voters and it will be too much to say that every one of the voters in the polling station would have cast his votes. It may even be that the votes might be split between the candidates although the proportion itself cannot be fixed. But it is an extremely hazardous task to apportion the votes between the contending parties especially in a case where the difference is narrow and the number of persons who had not voted is considerable. In this case the difference of votes is 1309 and the persons who did not exercise their votes numbered more than twice that figure. On behalf of the petitioner a number of witnesses have been examined for the purpose of showing that those persons were waiting at the Polling booth at Kanjanaickampatti on the day of the election till mid-day and that a large number of voters who had gathered there since that morning went away, and that they had not opportunity of recording their votes. A feeble attempt was made in cross-examination to establish that emissaries were sent out

to several villages after the polling commenced to get back the voters with a view to have a full poll. The petitioner's witnesses have denied this suggestion and the 1st respondent has not adduced any evidence on this point. It cannot be denied that the late opening of the poll should have caused extreme discomfort to the voters. One should have expected them to assemble in large numbers that morning and that is what the petitioner's witnesses state, and many of them should have come from villages situated a few miles off as is evident from the plan filed. It would be casting a needless burden on such voters to wait the whole day on the offchance of the poll commencing at some later time, especially when there were no facilities for refreshment or food at that place. We can well assume that quite a number of voters should have returned home without voting and should not have thought of coming back even if they had known that polling had commenced late in the day. It is impossible to establish how many such voters returned without exercising their votes because of the late polling. The point remains that polling in fact was far below the normal level and there is considerable force in the statement of the petitioner as P.W. 11 that this polling station was his stronghold and that the lead which he had in that station would have been considerably augmented so as to tilt the election in his favour if really the poll had been held at the regular prescribed hours. The petitioner sent a telegram Ex. A-1 to the Election Commissioner on the 16th referring to the delay in polling and in his petition Ex-A-2 he states that several thousands of voters who had turned up to vote for the petitioner had to wait indefinitely and finally return, confused and disappointed as no indication whatever was given as to when the polling would actually commence. The suggestion made on behalf of the 1st respondent that the delay in polling was made by the extended hours of polling is not borne out by the evidence. The presiding Officer states that polling closed at 5 P.M., and thereafter only such persons who had got into the enclosure were allowed to exercise their votes. This is quite different from extension of the polling hours. Further, it is worthy of note that on the date of the election the Presiding Officer had no power to extend the hour of poll and the Notification empowering such Officer to extend the time of poll in fact came into effect only subsequent to the election. The plea of estoppel raised on behalf of the Respondent has little substance as there is no reliable evidence to show that the candidates consented to the poll commencing at the late hour. The statement alleged to have been taken from the agents in token of their consent to this course has not been forthcoming. Even if such consent should have been given it is difficult to see how the candidates will be bound thereby.

14. In view of the foregoing, we are of the opinion that there was a serious irregularity in the matter of polling in the Kanjanaickampatti polling station, that the voters did not have eight hours poll, and that as a result thereof the result of the election was materially affected. We therefore declare the election to be wholly void in terms of Section 98(d) of the Representation of the People Act, 1951.

15. Before we part with the case we desire to point that the conduct of the Tahsildar and the Returning Officer in respect of the conduct of the polling in this village to be blame worthy. Repeated and pressing requests were made by the Presiding Officer for despatch of the symbols since the day previous to the election. It should have been obvious that the polling could not commence without the symbols being available at the polling station. There is nothing on record to show why neither the Tahsildar nor the Returning Officer took any steps to send the symbols in time. It is even more significant that neither of them went to the polling station till 1 P.M., although the Tahsildar was camping a few miles away and the Returning Officer was urgently and repeatedly informed about the state of affairs in that polling station. At any rate after the Tahsildar and the Returning Officer came up on the scene it should have been easy for them to notice that it was a proper case for adjournment of the poll in terms of Section 57(1) of the Act. They did not do so. On the other hand they seem to have gone on as though nothing had happened, oblivious of the fact that the bulk of the voters were not given a fair opportunity to vote. We wish to further add that in prescribing forms it would be better to insert a provision whereby the Presiding Officer should state the exact hour at which the polling commenced and the time at which it closed. It should not be a matter of controversy or for evidence as to when exactly the polling commenced or closed.

16. It is not without regret that we have to declare this election to be wholly void because the 1st respondent himself was quite innocent and was free from blame in respect of the delayed polling. The proper procedure was not adopted either in the matter of holding the poll according to the prescribed time, or having the poll adjourned in respect of the particular polling station because of a lack of imagination and responsibility on the part of the Returning Officer and the Tahsildar, who were in charge of the election and to whom the presiding Officer looked for guidance. The law as stated above renders it necessary for us to declare that the late holding of the election in the Kanjanaickampatti polling station had materially affected the result of the election and we have therefore no other alternative except to declare the election to be wholly void. We direct in the circumstances that each party should bear his own costs, and the Government Pleader should get his costs from the Government and not from the party.

Dictated to the Shorthand Writer and Pronounced in open Court, this the 23rd day of March 1953.

(Sd). M. ANANTANARAYANAN, *Chairman.*

(Sd). P. RAMAKRISHNAN, *Judicial Member*

(Sd). B. V. VISWANATHA IYER, *Advocate Member.*

Petitioner's Exhibits

- A-1. 16-1-1952 . A true copy of the telegram sent by the petitioner to the Election Commissioner, Madras.
- A-2. 16-1-1952 . A true copy of the petition sent by the petitioner to the Election Commissioner, Madras.
- A-3. 16-1-1952 . A certified copy of the petition filed by the petitioner, before the Returning officer, Mechery Assembly Constituency, Salem.
- A-4. 11-1-1952 . Ballot Paper Accounts in Form No. 10 relating to Polling Station No. 94, Kanjanaickampatti, of Mechery Assembly Constituency.
- A-5. 18-1-1952 . Account of Ballot Papers in Form No. 14 polled in favour of the candidate Sri C. Gurava Reddi in the Mechery Assembly Constituency.
- A-5(a) 18-1-1952 . Account of Ballot Papers in Form No. 14 polled in favour of the candidate Sri M. Kandaswami Kandar in the Mechery Assembly Constituency.
- A-5(b) 18-1-1952 . Account of Ballot Papers in Form No. 14 polled in favour of the candidate Sri S. K. Perumal Goundar in the Mechery Assembly Constituency.
- A-5(c) 18-1-1952 . Account of Ballot Papers in Form No. 14 polled in favour of the candidate Sri K. S. Subramanja Goundar in the Mechery Assembly Constituency.
- A-6. 11-1-1952 . A marked Copy of the Electoral roll of booth No. 2 in Polling Station No. 92 of Mechery Assembly Constituency.
- A-7. 11-1-1952 . A Marked Copy of the Electoral roll of booth No.3 in Polling Station No. 92 of the Mechery Assembly Constituency.
- A-8. 11-1-1952 . A marked Copy of the Electoral roll of booth No. 4 in Polling Station No. 92 of the Mechery Assembly Constituency.

1st Respondent's Exhibits :—

- B-1. 11-1-1952 . A Marked Copy of the electoral roll of booth No. 1 in Polling Station No. 92 of the Mechery Assembly Constituency.
- B-2(a) do Entry at page 2 serial No. 82 relating to a voter Chinnammal (P. W. 3).
- B-2. 18-1-1952 . A certified copy of the order passed by the Returning Officer, Mechery Assembly Constituency on the objection petition filed by the petitioner, Sri M. Kandaswami Kandar.

Court Exhibits :—

- C-1. 10-1-1952 . A true copy of the letter written by Sri M. Lokanatha Iyer, Presiding Officer to the Tahsildar, Omaloore for the immediate supply of certain articles mentioned therein.
- C-2. 10-1-1952 . A true copy of the Office Note put up by Sri M. Lokanatha Iyer, Presiding Officer, Kanjanaickempatty booth No.94, to the Tahsildar, Omaloore, at about 8-30 P.M., regarding the non-supply of articles called for by him Ex. C-1.
- C-3. 11-1-1952 . A true copy of the letter written by Sri M. Lokanatha Iyer, Presiding Officer Kanjanaickempatty Booth No. 94 at about 6 A.M., to the Tahsildar Omaloore again stating that the articles applied for by him have not yet been received by him till then.
- C-4. 11-1-1952 . A true copy of the letter written by Sri M. Lokanatha Iyer, Presiding Officer, Kanjanaickempatty at about 10-30 A.M., to the Returning Officer, Mechery Assembly Constituency informing the non-supply of the articles and also soliciting intructions for further action.

Petitioner's witnesses :—

1. Pancha Goundar.
2. Appasami Kandar.
3. Chinnammal.
4. Kulundai Ammal.
5. Dasa Kandar.
6. Narayana Goundar.
7. Perumal Nadar.
8. Ramu Chetti.
9. Govinda Goundar.
10. Kuppusami Chetti.
11. M. Kandasami Kandar. (Petitioner).

1st respondent's witness :—

Nil.

Court witness :—M. Lokanatha Iyer (Presiding Officer).(Sd.) /M. ANANTANARAYANAN *Chairman,*
Election Tribunal

[No. 19/8/52-Elec. III/4430.]

S. R. O. 693.—WHEREAS the elections of Shri Jialal Mandal and Shri Misri Mushar as members of the Legislative Assembly of the State of Bihar from the Bakhtiarpur-cum-Chautham Constituency of that Assembly have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Bambhola Mandal s/o Shri Maluka Mandal, Village Sonpura, P. S. Bakhtiarpur, District Monghyr (Bihar) ;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order to the Election Commission ;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BHAGALPUR

ELECTION PETITION No. 305 OF 1952

and

ELECTION CASE No. 6 OF 1952

Bambhola Mandal s/o Shri Maluka Mandal by caste Yadava, by occupation cultivator, resident village Sonpura, P. S. Bakhtiarpur, District Monghyr—*Petitioner.*

Versus

1. Shri Jialal Mandal s/o Gudar Mandal, village Ranginia, P. S. Bakhtiarpur, District Monghyr.
2. Shri Misri Mushar, village Sonihar, P. O. Bakhri of P. S. Khagaria, District Monghyr.
3. Shri Nazir Hassan s/o Late Chaudhry Mahboob Ali, V. & P. S. Bakhtiarpur, District Monghyr.
4. Shri Manilal Sardar s/o Saini Sardar of village Pirnagara, P. O. Pirnagara Deorhi, P. S. Chautham, District Monghyr.
5. Shri Panchanand Das of village Phudkichak, P. S. Parbatta, District Monghyr, P. O. Muskepur—*Respondents.*

FOR PETITIONER:

Shri Niroj Chandra Ganguly, Advocate, Mr. Baldeo Narain and Shri Parmeshwari Prasad Verma, pleaders.

FOR RESPONDENT :

Shri Udai Narain, Advocate, Shri Hirdai Narain and Shri Satya Narain Prasad, pleaders.

PRESENT:

Shri K. Sahai, Barrister-at-Law—*Chairman.*

Shri Umakanta Frasad Sinha, Retired District & Sessions Judge and Shri Rajeshwari Prasad, Advocate.—*Members of the Election Tribunal.*

JUDGMENT

This Election petition has been filed by Bambhola Mandal and it relates to the election to the Bihar State Assembly from Bakhtiarpur-cum-Chautham plural constituency. Two members had to be returned from this constituency and one of those two seats was reserved for a member of the scheduled castes. Jialal Mandal, respondent no. 1, secured the largest number of votes and Misri Mushar, respondent No. 2 secured the largest number of votes among members of the scheduled castes. Hence these two respondents were declared to be elected. Jialal Mandal and Misri Mushar were set up by the Congress party whereas the petitioner was one of the candidates set up by the Socialist party. The petitioner, who is not a member of any scheduled caste, secured 19,176 votes as against 23,242 secured by Jialal Mandal. Nazir Hassan, respondent No. 3, secured 18,172 votes.

Shortly stated, the petitioner's case is that the nomination paper of Shri Nazir Hassan was illegally and improperly accepted, that there has been no free election by reason of the fact that respondents Nos. 1 to 3 successfully contrived to get a number of women who were not voters to cast their votes for women voters as detailed in annexure "A", that those three candidates took recourse to false personation of a large number of voters who were dead or absent as detailed in annexure "B" and that Yadava community made voters swear by cows to vote for respondent No. 1 and the richer section of the Muslim community made poorer Muslims swear by Koran to vote for Nazir Hassan, respondent No. 3, as detailed in annexure "C". On these allegations, the petitioner prays that the entire election be declared to be void.

Jialal Mandal, respondent No. 1, has filed one written-statement and Misri Mushar, respondent No. 2, has filed a separate written-statement.

In these written-statements, both these respondents have denied the allegations of improper and illegal acceptance of the nomination papers of Sri Nazir Hassan. They have also denied the allegations relating to corrupt practices and have stated that the particulars of such practices as given in the annexures attached to the petition are vague and incomplete. They have further alleged that the petition is bad for non-joinder of two of the duly nominated candidates. Respondent No. 5 has filed another written-statement, generally supporting the petitioner's case. Respondents Nos. 3 and 4 have neither appeared nor filed any written-statement. At the hearing, Jialal Mandal, respondent No. 1, alone has contested the case. The following issues have been framed :—

Issues

1. Is the Election petition maintainable?
2. Is the petition barred by limitation?
3. Is the case bad for defect of parties?
4. Is the Election petition liable to be dismissed for want of a list of particulars as required by law?
5. Has the election been affected by reason of corrupt and illegal practices and by offer of bribe and illegal gratification during the Election by the respondents, their agents or supporters with the connivance of the respondents or their agents?
6. Was the nomination of Nazir Hassan illegally and improperly accepted and has the election been materially affected thereby?
7. Has the Election been materially affected by the reception of any illegal and void votes?
8. Did the Presiding officer at Sitnabad allow the voters in the second supplementary list to cast their votes at the instance of the respondents although he had previously refused to do so?
9. To what relief, if any, is the petitioner entitled?

Findings

Issues Nos. 1 to 4.—At the instance of respondent No. 1 and without any objection on behalf of the petitioner, these four issues were taken up for decision first. By our order, dated the 12th January, 1953 we have disposed of all these issues. As will appear from that order, we have answered issues Nos. 2, 3 and 4 in the negative and issue No. 1 in the affirmative. We have held in that order that the case is not bad for non-joinder of parties and that annexures "A" and "B" attached to the petition are "too vague to be acted upon inasmuch as they do not comply with the requirements of law" but "sufficient details have been given in connection with some of the allegations made" in annexure "C".

In view of the above findings, we ruled at the hearing of this case that the petitioner could not be allowed to prove any fact mentioned in annexures "A" and "B". The petitioner then confined himself only to two points, namely, (1) the nomination papers of Shri Nazir Hassan were improperly and illegally accepted and (2) oaths were administered to voters for the purpose of binding them to vote for Jialal Mandal, respondent No. 1. These two allegations will be considered under issues Nos. 5 and 6.

Issues Nos. 7 and 8.—It is clear from what we have just mentioned that, at the time of hearing, the petitioner did not press the allegations referred to in these two issues. We, therefore, answer these two issues in the negative.

Issue No. 5.—P. Ws. 1 to 10 have said that respondent Jialal or one or the other of his polling agents administered oaths to Hindus by making them take the tail of a cow in their hands and to Mohammedans by making them swear on pain of being deemed to have eaten pig's meat that they would vote for Jialal. According to them, these oaths were administered in various villages. Had such oaths been administered in different villages, the petitioner or even the voters themselves must have complained to some public servant. It appears from the admissions of all these witnesses that they did not complain about this alleged act of administering oaths to anybody or, at any rate, to any public servant. The petitioner (P. W. 12) says that he heard reports about these oaths. In his cross-examination, he says that his workers gave him these reports verbally when they came to Khagaria on the date fixed for counting of votes. This shows that even he, the candidate who was affected by the administration of those oaths, did not know anything about them until the election was over and before the date on which the votes were to be counted. In these circumstances, we have come to the conclusion that the evidence of P. Ws. 1 to 10 on this point is improbable and unreliable.

We may also mention that there is no allegation in the election petition that Mohammedans were made to swear oaths for the purpose of giving votes to Jialal though there is an allegation in it that richer Mohammedans made poorer Mohammedans swear by the Koran that they would vote for Nazir Hassan. The allegation in the election petition that members of the Yadava Community made voters a swear by cows to vote for Jialal has obviously been given up by the petitioner because he is also a member of the Yadava Community and, indeed, he is a close relation of respondent Jialal.

R. Ws. 1, 2, 3, 4, 6, 7 and respondent No. 1 (R.W.9) himself have denied the allegation relating to the administration of oaths. We are of opinion that they have truthfully said that no oath was given to any voter to vote for Jialal. We hold accordingly.

As we have already indicated, the allegation relating to offer of bribe and illegal gratification to voters has not been pressed at the time of hearing by the petitioner.

In the circumstances mentioned above, this issue is answered in the negative.

Issue No. 6.—Ext. 4 is the Electoral Roll of village Bakhtiarpur No. 64. At page 8, Nazir Hassan is recorded as a voter against serial No. 515, House No. 45. A correction slip with the heading “Sudhipatra” forms part of the same exhibit. It shows that “Nazir Hassan” of the original Electoral Roll stands corrected as Nazirul Hassan against serial No. 515, House No. 45. Exts. 1, 2 and 3 are three nomination papers filed by respondent No. 3. In all these exhibits his name is mentioned as Nazir Hassan and he has also signed as Nazir Hassan. Exts. 1(a), 2(a) and 3(a) are orders of the Returning officer on the backs of the nomination papers. They show that petitioner Bambhola Mandal as well as Jialal Mandal, respondent No. 1, objected that the candidate's name was Chaudhry Mohammad Nazirul Hassan, that Nazirul Hassan was a voter and Nazir Hassan was not a voter and that the nomination papers which purported to be filed by Nazir Hassan should not, therefore, be accepted. The Returning Officer came to the conclusion that Nazirul Hassan and Nazir Hassan denoted one and the same man and that the defect was technical. He, therefore, overlooked the defect and accepted the nomination papers. Shortly put, therefore, the petitioner's case as well as the case of respondent No. 1 before the Returning Officer was that Nazirul Hassan was entered as a voter in the Electoral Roll. That the candidate who had filed the nomination papers was also Nazirul Hassan but had wrongly given his name as Nazir Hassan and that the nomination papers should not be accepted because Nazir Hassan was not a voter. Thus the identity of the candidate as the recorded voter was not at all questioned. The defect pointed out was only that the name given in the nomination papers was Nazir Hassan whereas Nazir Hassan had ceased to be a voter under the correction slip which gave the name as Nazirul Hassan.

In the election petition, the petitioner has said, “the name of the said Sri Nazir Hassan was and is not entered in the voters' list. The petitioner denies that he was a voter or that he was qualified to be nominated or stand as a candidate. In several paragraphs, reference has been made to the candidate as Sri Nazir Hassan. It has not been stated in any part of the election petition that the candidate's name is Nazirul Hassan and not Nazir Hassan nor has it been alleged in any part of the petition that the candidate is someone other than the recorded voter.”

P.W. 11 gives his own name as Nazir Hassan. He says that he was employed by Choudhry Mohammad Nazirul Hassan of Bakhtiarpur as a cook, that he was recorded as a voter and that he polled his vote at Bakhtiarpur polling booth. This witness thus puts forward an entirely new case to the effect that he was a voter, leaving it to be inferred that respondent No. 3 was not a voter. P.W. 12 is the petitioner himself. He says that the candidate was the Choudhry Saheb of Simri Bakhtiarpur, that his name was Choudhry Mohammad Nazirul Hassan, that Nazir Hassan (P.W. 11) was in the service of Choudhry Saheb up to about a year ago. P.W. 13 says that the candidate's name is Choudhry Mohammad Nazirul Hassan and he is not called Nazir Babu or Nazir Hassan. As we have mentioned it was not the petitioner's case before the Returning Officer or in the election petition that the voter was someone quite different from the candidate. The allegation that respondent No. 3 is not called Nazir Hassan at all has not been made in the election petition. In those circumstances, we are of opinion that P.Ws. 11, 12 and 13 have given unreliable evidence. A letter (Ext. 5) has been produced to show that respondent No. 1 signed his name in Urdu as Nazirul Hassan. This is of no help to the petitioner because it is the admitted case that his name is Nazirul Hassan, the only difference between the parties being that respondent No. 1 alleges that Nazirul Hassan is known also as Nazir Hassan or Nazir Babu whereas the petitioner alleges that he is not called by these names.

R.W. 10 is a pleader and R.W. 11 is a Mukhtar. They have said that Choudhry Saheb of Simri Bakhtiarpur is popularly known as Nazir Babu or Nazir Hassan and he is also known as Nazirul Hassan. In support of their evidence, they have produced letters [Exts. A(1) and A(2)] as those written by respondent No. 3. In these letters, respondent No. 3 has signed his name as Nazir. R.W. 8 says that Choudhry Nazirul Hassan is also called Nazir Hassan. He is a man of Bakhtiarpur i.e., the same village in which respondent No. 3 resides. There seems to be no good reason to disbelieve the evidence of these witnesses. Besides, it is well known that Nazirul Hassan and Nazir Hassan are two forms of the same name. In the circumstances set forth above we hold that the name of respondent No. 3 is Nazirul Hassan as well as Nazir Hassan. The defect in his giving the name in the nomination papers as Nazir Hassan when the voter according to the correction slip was Nazirul Hassan is a minor and technical defect because identity cannot be doubted and it has to be held that respondent No. 3 is the man who is recorded as the voter. Under section 33(5) of the Representation of People Act, 1951, the Returning Officer may permit any clerical error in the nomination paper in regard to names to be corrected and may direct that any clerical or printing error in the entries in the Electoral Rolls shall be overlooked. Under Section 36(4) of the said Act, the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. In view of these provisions we hold that the Returning Officer rightly ignored the technical defect in the nomination papers

and that his act in accepting the nomination refers of respondent No. 3 was perfectly legal and proper.

In view of the above finding, we answer this issue in the negative.

Issue No. 9.—As there is no ground for declaring the election to be void, we hold that the petitioner is not entitled to any relief.

It, is therefore,

ORDERED

that the election petition be dismissed with costs. The petitioner will pay Rs. 250/- as costs to Shri Jialal Mandal, respondent No. 1.

BHAGALPUR;

(Sd.) K. SAHAI, *Chairman*.

The 31st March, 1953.

(Sd.) U. K. P. SINHA, *Member*.

(Sd.) RAJESHWARI PRASAD, *Member*.

BEFORE THE ELECTION TRIBUNAL, BHAGALPUR

ELECTION PETITION No. 305 OF 1952

Bambhola Mandal s/o Shri Maluka Mandal by caste Yadava, by occupation cultivator, resident of village Sonpura, P.S. Bakhtiarpur, District Monghyr—*Petitioner*.

Versus

1. Shri Jialal Mandal s/o Gudar Mandal, village Ranginia, P.S. Bakhtiarpur, District, Monghyr.
2. Shri Misri Mushar, village Sonihar, P.O. Bakhri of P.S. Khagaria, District, Monghyr.
3. Shri Nazir Hassan s/o Late Chaudhry Mahboob Ali, V. & P.S. Bakhtiarpur, District Monghyr.
4. Shri Madi Lal Sardar s/o Saini Sardar of village Pirnagara, P.O. Pirnagara Deorhi, Chautham, District Monghyr.
5. Shri Panchanand Das of village Phudkichak, P.S. Parbatta, District Monghyr, P.O. Muskepur—*Respondents*.

FOR PETITIONER:

Shri Niraj Chandra Ganguly, Advocate and

Shri Parmeshwari Pd. Verma, pleader.

FOR RESPONDENT NO. 1 :

Shri Udai Narain, Advocate and Shri Hare Krishna Pd. and

Shri Satya Narain Pd., pleaders.

FOR RESPONDENT NO. 2 :

Shri Hiradai Narain, pleader.

PRESENT:

Shri K. Sahai, Barrister-at Law—*Chairman*.

Shri Umakanta Prasad Sinha, Retired District & Sessions Judge, and Shri Rajeshwari Prasad, Advocate.—*Members of the Election Tribunal*.

JUDGMENT

This petition has been filed by the petitioner Bambhola Mandal calling in question the election of Shri Jialal Mandal (respondent No. 1) and Shri Misri Mushar (respondent No. 2) from the Bakhtiarpur-cum-Chautham constituency to the Legislative Assembly of No. 1 and without any objection on behalf of the petitioner the first four of the issues framed in the case have been taken up for decision first. Those issues are as noted below:—

1. Is the Election petition maintainable?
2. Is the petition barred by limitation?
3. Is the case bad for defect of parties?
4. Is the Election petition liable to be dismissed for want of a list of particulars as required by law?

The facts which, as admitted by both the parties, are relevant for the decision of the issues in question are as follows:—The constituency aforesaid was a plural constituency and out of the two members who were to be returned from this constituency, one seat was reserved for the scheduled caste. The respondent No. 1 secured the majority of the total number of votes polled in this constituency while the respondent No. 2 secured the majority of votes for the seat reserved for the scheduled caste and they both were accordingly declared to be elected and the declaration with regard to their election was notified in the official gazette on 14th February, 1952. This election petition has been filed within 14 days from the date of the publication of the notice that the return of election expenses had been lodged with the Returning officer. There are verifications but no signature at the foot of any of the annexures "A", "B" and "C" which are stated to be the lists of corrupt practices.

Findings

Issues Nos. 1, 3 and 4.—These are connected issues and for the sake of convenience, they are dealt with together. It is not disputed that Shri Mahabir Mandal and Shri Gulab Pasban were two of those candidates who were duly nominated for election to the Legislative Assembly from the constituency aforesaid and the learned advocate for the respondent No. 1 contends that since they have not been impleaded as respondents in this case, the case is bad for defect of parties and the application cannot proceed, rather it ought to be dismissed in view of the express provisions of section 82 of the Representation of the People Act, 1951, that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself, if he was so nominated. We are unable to accept this argument for it is the admitted case of both the parties that Shri Mahabir Mandal and Shri Gulab Pasban also were, no doubt, duly nominated as candidates for election to the Legislative Assembly from the Bakhtiarpur-cum-Chautham constituency but they subsequently withdrew their candidature and they both thus, in our opinion, were only proper and not necessary parties to this case inasmuch as they are not in any way affected by the decision in this case and the validity of the election could thus be safely agitated in their absence. It is thus clear that Shri Mahabir Mandal and Shri Gulab Pasban were only proper and not necessary parties to this case and rule 9 of Order I, 2 C.P.C. expressly lays down that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Sub-section (2) of section 90 of the Representation of the People Act, 1951 lays down that every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure and this being so, we have no doubt in our mind that the provisions of Order I r. 9 of the Code of Civil Procedure are fully applicable to this case. We, therefore, are of the opinion that the application cannot fail on account of the failure on the part of the petitioner to join Shri Mahabir Mandal and Shri Gulab Pasban as respondents to the petition.

The next contention of the learned advocate for respondent No. 1 is that the application is not accompanied by any list setting forth full particulars of the corrupt and illegal practices alleged by the petitioner and that even if the annexures "A", "B" and "C" of the application be treated as lists of such particulars, they have not been signed by the petitioner and further, they are too vague to be acted upon and that the petitioner having thus failed to comply with the express provisions of sub-section (2) of section 83 of the Representation of People Act, 1951, the application is not maintainable in law. We do not think that there is any force or substance in also this argument so far as annexure "C" is concerned for sufficient details have been given in connection with some of the allegations made therein. This annexure can, therefore, be safely treated as a list as required by sub-section (2) of section 83 of the Act. Annexures "A" and "B" are, no doubt, too vague to be acted upon inasmuch as they do not comply with the requirements of law. In the view that we take of annexure "C", however, we do not think that the petition is not accompanied by any list setting forth full particulars of the corrupt practices alleged by the petitioner. So far as the failure on the part of the petitioner to put his signature at the foot of each of the aforesaid three annexures is concerned, the provision for signing and also the provision for verifying the petition and the list in sub-sections (1) and (2) of section 83 of the Representation of People Act, 1951, have been made for the purpose of ensuring that the petitioner cannot subsequently turn round and say that the allegations in the petition or the list were not made to his knowledge and were not subsequently binding on him. As there is a verification at the foot of each of the annexures "A", "B" and "C", the petitioner cannot, to our mind, be heard to say that the allegations made therein were not made to his knowledge. Hence the purpose of the enactment of the provisions of sub-sections (1) and (2) of section 83 of the Act has been fully achieved by the petitioner's verification at the foot of each of the aforesaid three annexures. It would not also be out of place to mention here that sub-sections (1) and (2) of section 83 of the Act correspond to rules 14 and 15 of Order VI of the Code of Civil Procedure. In those rules, the word "shall" has been used just as it has been used in sub-sections (1) and (2) of section 83 of the Act and it is a well settled principle of law that rules 14 and 15 of Order VI C.P.C. are not mandatory and that the non-compliance with the provisions of these rules would amount to a mere irregularity. There cannot thus be any room for doubt that the omission on the part of the petitioner to put his signature at the foot of the aforesaid three annexures to the petition is not fatal to the maintainability of the petition in law.

It is clear from above that the case is not bad for defect of parties nor the election petition is liable to be dismissed for want of a list of particulars as required by law and that the election petition

is maintainable in law. Issues nos. 3 and 4 are thus answered in the negative and issue no. 1 in the affirmative.

Issue No. 2.—This issue is not pressed and since the application, it is admitted, has been filed within 14 days from the date of the publication of the notice that the return of election expenses had been lodged with the Returning Officer, there cannot be any possible room for doubt that the petition is not time barred. This issue is accordingly answered in the negative.

BHAGALPUR,
The 12th January, 1953.

(Sd.) K. SAHAI, *Chairman.*

(Sd.) U.K.P. SINHA, *Member.*

(Sd.) RAJESHWARI PRASAD, *Member.*

[No. 19/305/52-Elec. III/4416.]

By Order

P. R. KRISHNAMURTHY, *Asstt. Secy.*